

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201245020**

Release Date: 11/9/2012

Index Number: 355.00-00, 355.01-01,

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:02

PLR-105702-12

Date: August 06, 2012

LEGEND

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Controlled =

Corporation =

PLR-105702-12

2

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4

Shareholder 5 =

Shareholder 6 =

Shareholder 7 =

Shareholder 8 =

Shareholder 9 =

Shareholder 10 =

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3

Shareholder 11 =

Shareholder 12 =

Shareholder 13 =

Shareholder 14 =

Shareholder 15 =

Shareholder 16 =

Shareholder 17 =`

Shareholder 18 =

Shareholder 19 =

Shareholder 20 =

Shareholder 21 =

Shareholder 22 =

Shareholder 23 =

Shareholder 24 =

Shareholder 25 =

Shareholder 26 =

Shareholder 27 =

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5

Shareholder 28 =

Shareholder 29 =

Shareholder 30 =

Shareholder 31 =

Shareholder 32 =

Shareholder 33 =

Shareholder 34 =

Shareholder 35 =

Shareholder 36 =

Shareholder 37 =

Shareholder 38 =

Shareholder 39 =

Shareholder 40 =

Shareholder 41 =

Shareholder 42 =

Shareholder 43 =

Shareholder 44 =

Exchanging
Shareholders =

Business A =

Business B =

Property C =

Property D =

State X =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

a =

b =

c =

d =

e =

f =

g =

Dear _____ :

This letter ruling responds to your January 31, 2012 request, submitted by your authorized representative, for rulings on certain federal income tax consequences of a proposed transaction. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (defined below): (i) satisfies the business purpose requirements of Treas. Reg. § 1.355-2(b); (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing is a State X holding company that was organized on Date 1 and has one class of common stock outstanding. All of the stock of Distributing is held by a individual shareholders. Distributing owns all of the stock of Controlled, Sub 1, Sub 2, and Sub 3. Sub 1 owns all of the stock of Sub 4. Each of Controlled, Sub 1, Sub 2, and Sub 3 is engaged in Business A. Sub 4 is engaged in Business B. In the aggregate, Sub 1, Sub 2, and Sub 3 owned b shares of Corporation until Date 9, when c shares of Corporation were transferred to Controlled.

Distributing acquired Controlled on Date 2, and acquired indirect ownership of Sub 1 on Date 3 and direct ownership of Sub 1 on Date 4. Distributing acquired Sub 2 on Date 5 and acquired Sub 3 on Date 6. Sub 1 established Sub 4 on Date 7. On Date 8, Distributing elected to be treated as a subchapter S corporation for federal income tax purposes. Also on Date 8, Distributing made Qualifying S Corporation Subsidiary elections for Controlled, Sub 1, Sub 2, Sub 3 and Sub 4.

Controlled owned d acres of real property located in Y (Property). On Date 10, Controlled sold Property and subsequently distributed h % of the proceeds to

Distributing. Distributing and Sub 1 have the conditional right to receive Property B in the future.

Distributing has submitted financial information indicating that the Business A had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Distributing has contributed f% of the right of Distributing and Sub 1 to Property B to the capital of Controlled through an escrow account under the control of an independent escrow agent. Controlled will receive f% of Property B upon the distribution from the escrow.
- (ii) The capital of Controlled will be adjusted in cash immediately prior to the Proposed Transaction to equal f% of the combined capital of Distributing and its subsidiaries.
- (iii) The Exchanging Shareholders will transfer to Distributing g common shares of Distributing, constituting all of the Distributing shares owned by the Exchanging Shareholders and f% of the total pre-distribution outstanding shares of Distributing.
- (iv) In exchange, the Exchanging Shareholders will receive from Distributing all of the outstanding common shares of Controlled.
- (v) Immediately after the Proposed Transaction Controlled will elect to be treated as an S corporation pursuant to section 1362(a).

REPRESENTATIONS

Distributing makes the following representations in connection with the Proposed Transaction:

- (a) The fair market value of the Controlled common shares to be received by each Exchanging Shareholder will be approximately equal to the fair market value of the Distributing stock surrendered by each Exchanging Shareholder in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by an Exchanging Shareholder as a creditor, employee, or in any capacity

other than that of a shareholder of Distributing.

- (c) The five years of financial information submitted on behalf of Distributing and its continuing subsidiaries after the distribution is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Controlled is representative of the present business operations of Controlled. There have been no substantial operational changes in Controlled since the date of the last financial statements submitted.
- (e) Following the transaction, Distributing and Controlled will each continue the active conduct of its business independently and with its separate employees.
- (f) The distribution of the common shares of Controlled is being carried out for the corporate business purpose of terminating the costs being incurred by both Distributing and Controlled, and the disruption of management and operations of both Distributing and Controlled, associated with the ongoing disputes and litigation between the Exchanging Shareholders and the continuing shareholders of Distributing.
- (g) The distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (h) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (i) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution, or (ii) attributable to distributions on Distributing stock that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date

of the distribution.

- (j) The total adjusted basis of the assets transferred by Distributing to Controlled in the transaction will equal or exceed the amount of liabilities assumed (within the meaning of section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.
- (k) The total fair market value of the assets transferred to Controlled in the transaction will exceed the sum of the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in connection with the exchange. No liabilities owed to Controlled by Distributing will be discharged or extinguished in connection with the exchange. Distributing will receive no property other than stock and securities permitted to be received under section 361(a) without the recognition of gain) in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (l) The liabilities (within the meaning of section 357(d)) assumed by Controlled in the transaction were incurred in the ordinary course of business and are associated with the assets of Controlled.
- (m) Neither Distributing nor Controlled will accumulate its receivables or make an extraordinary payment of its payables in anticipation of the transaction.
- (n) No inter-corporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the common shares, except for (i) a possible adjustment to the capital of Controlled pursuant to the Separation and Distribution Agreement, if it is determined upon a final closing of the financial records of both Distributing and Controlled that the adjustment made at closing was not accurate, and (ii) possible immaterial payables and receivables that arise in the ordinary course of business. Either or both amounts will be paid in the ordinary course of business.
- (o) Payments made in connection with any continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (p) Neither Distributing nor Controlled is an investment company as defined in section 368(a)(2)(F)(iii) or a disqualified investment corporation within the meaning of section 355(g)(2).
- (q) Distributing and Controlled will each pay their own expenses, if any, incurred in connection with the transaction.

- (r) The distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (s) Immediately after the transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3), in the stock of Distributing or Controlled who did not hold such an investment immediately before the transaction or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (t) There is no plan or intention to liquidate either Distributing or Controlled, or to merge either corporation with any other corporation. There is no plan or intent to sell or otherwise dispose of assets of either corporation after the transaction except in the ordinary course of business.
- (u) The Exchanging Shareholders intend to make the S election for Controlled effective with the Distribution.
- (v) The income tax liability for the taxable year in which investment credit property (including any building to which section 47(d) applies is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) (or section 47, as in effect before the amendment by Public Law 101-508. Title 11, 104 Stat. 1388, 536 (1990), if applicable, to reflect an early disposition of the property.
- (w) Neither the business of Controlled, nor control of an entity conducting this business, has been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

RULINGS

Based solely on the information submitted and the representations made, we rule as follows:

- (1) For federal income tax purposes the transaction described above will be treated as a reorganization within the meaning of section 368(a)(1)(D). Each of Distributing and Controlled will be a party to the reorganization within the meaning of section 368(b). Accordingly, Distributing will recognize no gain or loss on the distribution of the Controlled stock in the distribution. Section 355(a) and (c)(1).

- (2) No gain or loss will be recognized by (and no amount will be included in the income of) the Exchanging Shareholders on the receipt of the Controlled common shares in the distribution. Section 355(a)(1).
- (3) The basis of the Controlled stock in the hands of each Exchanging Shareholder immediately after the distribution will be the same as such shareholder's basis in the Distributing stock surrendered in the exchange. Section 358(a)(1) and (b)(2).
- (4) The holding period of the Controlled stock received by each Exchanging Shareholder in the distribution will include the holding period of the Distributing stock with respect to which the distribution will be made, provided that such Distributing stock is held as a capital asset on the date of the distribution. Section 1223(1).
- (5) The earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (6) Distributing's momentary ownership of the stock of Controlled, as part of the reorganization under section 355, will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under section 1361(b)(1)(B). If Controlled otherwise meets the requirements of a small business corporation under section 1361, it will be eligible to elect to be a subchapter S corporation under section 1362(a) for its first taxable year.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the distribution is being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); (iii) whether the distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Lisa A. Fuller
Chief, Branch 5
Office of Associate Chief Counsel (Corporate)